

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD EARL GEORGE,

Plaintiff,

v.

CISNEROS, *et al.*,

Defendants.

Case No. 1:21-cv-00319-KES-BAM (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATION TO DISMISS
ACTION FOR FAILURE TO STATE A
CLAIM
(ECF No. 28)

ORDER DENYING DEFENDANTS'
REQUEST FOR SCREENING OF SECOND
AMENDED COMPLAINT AS MOOT
(ECF No. 27)

ORDER GRANTING PLAINTIFF LEAVE TO
FILE A THIRD AMENDED COMPLAINT

THIRTY (30) DAY DEADLINE

Plaintiff Richard Earl George ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On October 6, 2025, Plaintiff filed a second amended complaint. (ECF No. 26.) Defendants filed a request for screening of the second amended complaint on October 7, 2025. (ECF No. 27.)

On October 9, 2025, the Court screened Plaintiff's second amended complaint and issued findings and a recommendation that this action be dismissed based on Plaintiff's failure to state a cognizable claim upon which relief may be granted. (ECF No. 28.) Those findings and

1 recommendation were served on Plaintiff and contained notice that any objections thereto were to
2 be filed within fourteen (14) days after service. (*Id.*) Plaintiff timely filed objections to the
3 findings and recommendation and a declaration in support on October 27, 2025. (ECF Nos. 29,
4 30.)

5 In his objections and declaration in support, Plaintiff sets forth new factual allegations
6 regarding his specific experiences with the conditions of confinement that he alleges exist at his
7 current institution. For example, Plaintiff alleges that on October 30, 2025,¹ that he used the
8 Facility B2 Housing Unit (ADA) shower and was exposed to black mold and algae that caused a
9 fungus growth on his left foot and left thigh, for which he required medical treatment. (ECF No.
10 29, p. 3; ECF No. 30, p. 3.) Plaintiff also alleges that he is still suffering from the fungus growth
11 on his left thigh continues to the present date, which is supported by his medical records. (ECF
12 No. 30, pp. 3–4.) In September 2025, Plaintiff was also physically exposed to asbestos in the
13 Facility B dining hall when a wet asbestos ceiling divider panel fell on Plaintiff and others during
14 feeding time. (ECF No. 29, p. 3.) The next morning, the Captain of Facility B and Plant
15 Operations Maintenance Staff took digital camera footage of the damages or wet asbestos ceiling
16 panels in the Facility B dining hall as Plaintiff and others were escorted through a taped off
17 hazardous area to obtain breakfast. No repairs were made then, and nothing to the present date in
18 the dining hall or housing units. (*Id.*)

19 Plaintiff further alleges that Defendant Allison and Defendant Warden knew of the
20 building deterioration through SATF quarterly institutional audits of the dining hall and housing
21 unit Plant Operations maintenance records of 2019. (*Id.* at 4–5.) Plaintiff further alleges that he
22 submitted a CDCR-22 form in October 2019 requesting the second watch sergeant to provide
23 glue-stick mouse traps for the Facility B2 housing unit, and hanging sticky fly strips to catch
24 mosquitoes by the drinking fountains and standing water areas throughout the Facility B2 housing
25 unit. (ECF No. 30, p. 2.) In November or December 2019, when Plaintiff received his breakfast
26 meal in the Facility B dining hall, he looked down at his feet to notice mice running in and out
27 between his feet and throughout other inmates' feet as they ate their meal. (*Id.* at 4.) On this

28 ¹ As Plaintiff's objections were filed on October 27, 2025, this date appears to be a clerical error.

1 same day, it was raining outside and the dining hall asbestos ceiling dividers started falling on
2 Plaintiff and others eating breakfast, and custody staff escorted Plaintiff and other inmates to a
3 dry area on the opposite side of the dining hall to finish eating and exit the building area. (*Id.*)

4 Based on the above allegations, which were not included in Plaintiff's second amended
5 complaint, Plaintiff contends that he has set forth sufficient facts to state a claim for relief.

6 While Plaintiff's complaint must be construed liberally, Plaintiff must set forth "sufficient
7 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*
8 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
9 (2007)). Though detailed factual allegations are not required, "[t]hreadbare recitals of the
10 elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*,
11 556 U.S. at 678 (citation omitted). As discussed in the findings and recommendations, Plaintiff's
12 second amended complaint provided only conclusory statements regarding his conditions of
13 confinement claims. However, Plaintiff has provided additional factual allegations regarding the
14 conditions he personally witnessed or experienced, as well as alleging that Defendants Cisneros
15 and Allison knew about such conditions through periodic Plant Operations audit reports regarding
16 conditions, maintenance, and repairs to the facility. However, Plaintiff again fails to identify any
17 policy which was so deficient that the policy itself was a repudiation of his constitutional rights or
18 was the moving force of the constitutional violation, and Plaintiff's allegations as to any equal
19 protection claim remain conclusory at best. To the extent Plaintiff is attempting to add a claim
20 regarding medical treatment he did or did not receive related to the fungus growth on his left
21 thigh, Plaintiff was previously warned that he may not add additional unrelated claims to his
22 complaint. (ECF No. 24, p. 5.)

23 In light of the new allegations set forth in Plaintiff's objections, Plaintiff's *pro se* status,
24 and in an abundance of caution, the Court finds it appropriate to vacate the pending findings and
25 recommendation and to grant Plaintiff a **final opportunity** to amend his complaint. Plaintiff is
26 granted leave to file a third amended complaint, **limited to Plaintiff's claim for unconstitutional**
27 **conditions of confinement against Defendants Cisneros and Allison.**

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1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
 2 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*, 556
 3 U.S. at 678-79. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise
 4 a right to relief above the speculative level" *Twombly*, 550 U.S. at 555 (citations omitted).

5 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
 6 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
 7 "buckshot" complaints).

8 Plaintiff is advised that an amended complaint supersedes the original complaint. *Lacey v.*
 9 *Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended complaint
 10 must be "complete in itself without reference to the prior or superseded pleading." Local Rule
 11 220.

12 Finally, in light of the foregoing, Defendants' request for screening of the second
 13 amended complaint will be denied, as moot. The third amended complaint will be screened in
 14 due course to determine whether it states a cognizable claim for relief. Defendants are not
 15 required to file a separate request for screening of any third amended complaint.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations issued on October 9, 2025, (ECF No. 28), are
- 18 VACATED;
- 19 2. Defendants' request for screening of second amended complaint, (ECF No. 27), is
- 20 DENIED, as moot;
- 21 3. Plaintiff is granted leave to file a third amended complaint;
- 22 4. The Clerk's Office shall send Plaintiff a complaint form;
- 23 5. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a third
- 24 amended complaint, **limited to Plaintiff's claim for unconstitutional conditions of**
- 25 **confinement against Defendants Cisneros and Allison**; and

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6. **If Plaintiff fails to file a third amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to obey a court order, failure to prosecute, and failure to state a claim.**

IT IS SO ORDERED.

Dated: October 30, 2025

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE